IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 885 of 2005.

Reserved on: 16.06.2007.

Decided on: 18.07.2007.

State of H.P. and Others.	**…**	**…**	**Petitioners.**
Versus			
Raj Pal Gautam and another.	**…**	**…**	**Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For Respondent No.1:	**Mr. Rajnish K. Lal, Advocate vice Mr. K.D. Sood, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the award passed by the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala, dated 14.3.2005 in Reference No.13/1999.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court:-

> **"Whether the termination of services of Sh. Raj Pal Goutam by the (1) Superintending Engineer, Irrigation and PH circle Hamirpur, (2) Executive Engineer IPH Division Bilaspur (H.P.) w.e.f. 26-5-85 without any**

Whether reporters of local papers may be allowed to see the judgment? No.

notice, charge sheet, and without complying the provision of section 25(F) of the Industrial Dispute Act, 1947 is legal and justified. If not to what relief of past services benefits and back wages and amount of compensation, Sh. Raj Pal Goutam is entitled for ?"

In sequel to the reference made, the workman had filed a statement of claim. The employer had filed reply to the same. The Labour Court had passed the award in affirmative on 14.3.2005.

The learned Advocate General has strenuously argued that the workman was retrenched on 26.5.1985 and the reference has been made by the State Government in the year 1999 and this aspect of the matter has been overlooked by the Labour Court while granting 50% back wages to the workman from 26.5.1985 to 21.9.1989. Mr. Rajnish K. Lal, Advocate appearing vice Mr. K.D. Sood, Advocate for the respondent has supported the award dated 14.3.2005.

I have heard the parties and have also gone through the record.

The workman was employed on daily wages basis as beldar on 1st March, 1977 and was subsequently promoted as helper, Assistant Fitter and store Munshi. He was retrenched on 26.5.1985. He was re-engaged as Supervisor by the employer on 21.10.1989. He had raised the demand on 29.12.1997. The reference has been made by the State Government in the year 1999. The Labour Court had though come to the right conclusion that once the workman had completed 240 days, he was entitled to re-instatement, but in the present case due to delay and laches in raising the dispute, the Labour Court should not have awarded 50% back wages from 26.5.1985 to 21.9.1989. The workman was retrenched on 26.5.1985 and the dispute was raised after 14 years.

The Apex Court in a recent judgment in **State of Punjab v. Anil Kumar, JT 2007 (7) SC 559** has upheld the award passed by the Labour

Court directing the re-instatement of the workman though he had approached the Labour Court after 13 years but back wages as directed by the Labour Court and affirmed by the High Court were modified. Their Lordships have held as under:-

> **"Learned counsel for the respondent on the other hand submitted that there was a clear admission before the Labour Court that the respondent had worked for more than 240 days.**
>
> **In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed by the High Court so far as entitlement of the respondent-workman to be re-instated.**
>
> **At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.**
>
> **In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified."**

In view of the facts narrated hereinabove and the law laid down by the Hon'ble Supreme Court, the Labour Court should not have granted 50% back wages to the workman while directing his re-instatement. Accordingly, the award dated 14.3.2005 in reference No.13/99 is modified to the extent that the workman though will be entitled to all the reliefs as granted by the Labour Court including the seniority, but shall not be entitled to 50% back wages as granted by the Labour Court with effect form 26.5.1985 to 21.9.1989.

Consequently, this petition is disposed of in terms of the observations made hereinabove. No order as to costs.

(Rajiv Sharma)
Judge

July 18, 2007.
(sck).